

# **OPERATING AGREEMENT**

## **The Integration Process Relative to the National Environmental Policy Act and Section 404 of the Clean Water Act**

**For projects involving:**

**U.S. Army Corps of Engineers - Arizona Area Office  
Arizona Division of the Federal Highway Administration  
Arizona Department of Transportation**

---

### **I. APPLICABILITY**

- A. This Operating Agreement (OA) applies to transportation projects that are both a Federal Highway Administration (FHWA) action under the National Environmental Policy Act (NEPA) and require a U.S. Army Corps of Engineers (COE) individual permit under Section 404 of the Clean Water Act (CWA). This OA is limited to issues pertaining to Waters of the United States (Waters), including wetlands.
- B. Participation in this OA does not imply endorsement of all aspects of a transportation plan or project. Nothing in this OA or its Appendix is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the participating agencies.
- C. This OA is contingent upon the dedication of an employee located at the U.S. Army Corps of Engineers Arizona Office, funded by either the Federal Highway Administration (FHWA) or the Arizona Department of Transportation (ADOT), and working solely on Arizona transportation projects. In the event that a dedicated employee funded by either the FHWA and/or the ADOT is not located in the COE Office, this OA will become null and void.

### **II. BACKGROUND**

In a May 1, 1992 agreement, the Department of Transportation, the Department of Army (Civil Works), and the Environmental Protection Agency (EPA) adopted as agency policy (1) improved interagency coordination, and (2) integration of NEPA and the CWA Section 404 procedures.

Section 1309 of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) calls for a coordinated environmental review process to expedite federal highway projects. In July 1999, a National Memorandum of Understanding (MOU) between the Departments of Transportation, Interior, Agriculture, Commerce, Army (Civil Works); the EPA; and the

Advisory Council on Historic Preservation, was executed to support this environmental streamlining process. This MOU implements these policies and agreements as they relate to CWA Section 404 Individual Permits.

### III. NEPA-SECTION 404 INTEGRATION

The signatories to this OA commit to integrating NEPA and Section 404 of the CWA in the transportation planning, decision-making, and implementation process. The signatories are committed to ensuring the earliest possible consideration of the potential social, economic, and environmental effects of the proposed transportation action as they relate to Waters, including wetlands, and associated endangered, threatened, and sensitive plant and animal species.

Whenever avoidance of Waters, including wetlands is not practicable, minimization of impacts will be achieved, and unavoidable impacts will be mitigated to the extent reasonable and practicable. The signatories will integrate compliance with the Section 404(b)(1) Guidelines, with compliance with NEPA.

### IV. ANTICIPATED BENEFITS OF THE PROCESS

The process embodied in this OA will:

1. Improve cooperation and efficiency of inter-agency operations, thereby better serving the public,
2. Protect and enhance the Waters, including wetlands which will benefit the region's aquatic ecosystems and the public interest,
3. Expedite construction of necessary transportation projects, with benefits to safety, mobility, and the economy at large, and
4. Enable more transportation projects to proceed on budget and on schedule.

### V. IMPLEMENTATION PROCEDURES

The implementation procedures are outlined in the attached Appendix.

### VI. PARTICIPATION

If any Signatory Agency chooses not to participate in this NEPA – 404 Merger process for a particular project, at any time during the project, they will notify ADOT in writing. This does not mean that they will abdicate their involvement if there are scope changes or other reasons for their involvement at a later date. However, if they chose to participate in later stages during the project, they agree not to revisit earlier stages of the project.

**VII. MONITORING / EVALUATING IMPLEMENTATION OF OA**

The signatory agencies will monitor the success of this OA process and modify it as necessary to improve it.

**VIII. AGENCY ROLES AND RESPONSIBILITIES**

The roles of the agencies are outlined in the attached Appendix.

**IX. MODIFICATION / TERMINATION**

This OA may be modified upon approval of all signatories. One or more signatories may propose modification. Proposals for modification will be circulated to all signatories for a 30-calendar day review. Approval of such proposals will be indicated by written acceptance. A signatory may terminate participation in this agreement upon written notice to all other signatories.

The parties hereto have caused this document to be executed by the Chief, Arizona Area Office, U.S. Army Corps of Engineers; the State Engineer, Arizona Department of Transportation; and the Division Administrator, Arizona Division of the Federal Highway Administration on this 8<sup>th</sup> day of February, 2005.

BY: Cindy Lester Date: 2/8/05  
Cindy Lester, Chief, Arizona Area Office  
U.S. Army Corps of Engineers

BY: R E Hollis Date: 1/19/05  
Robert E. Hollis, Division Administrator  
Federal Highway Administration

BY: M J Ortega Date: 1/3/05  
Michael J. Ortega, State Engineer  
Arizona Department of Transportation

## **OPERATING AGREEMENT**

### **APPENDIX**

#### **NEPA – Section 404 Individual Permit Process\***

- 
- I. The Environmental & Enhancement Group (EEG) of the Arizona Department of Transportation (ADOT) will contact the employee (hereby known as "Liaison") dedicated to working solely on transportation projects for the Arizona Department of Transportation at the U.S. Army Corps of Engineers Office (COE), and inform the Liaison that a proposed transportation project will require an Individual Permit. This contact may be via phone, email, or written communication.
  - II. The EEG will invite the COE Liaison to be a cooperating agency for the proposed transportation project in a written letter with a copy to the Federal Highway Administration (FHWA). The invitation letter will include the scope of the proposed project, project location, project team members, any known information regarding project design and the construction schedule, and any known project team meetings, contact lists or document distribution lists. The COE Liaison will provide a written response accepting or rejecting the invitation. The FHWA will be the lead federal agency with the responsibility to comply with NEPA and other federal legal requirements for all proposed transportation related activities that will utilize Federal aid funds.
  - III. The EEG will provide the Liaison with a proposed Jurisdictional Delineation (Delineation) of the project area. The Liaison will review the proposed Delineation, and determine if it is complete. If it is incomplete, the Liaison will inform the EEG of missing and/or incomplete information, and EEG will ensure the missing and/or incomplete information is transmitted to the Liaison. If the delineation is complete, the Liaison will review the proposed delineation, and either revise the Jurisdictional Delineation and approve, or approve as proposed. (See attached document "Requirements for Obtaining a Section 404 Clean Water Act Delineation.") .
  - IV. The EEG will provide the Liaison with the proposed transportation project's statement of Purpose and Need. Preparation of the Purpose and Need will be done in coordination with FHWA. The Liaison will review and provide written comments back to the EEG.
  - V. The EEG will provide the Liaison with the proposed transportation project's Alternative Analysis, including the No Action alternative. Preparation of the Alternatives Analysis will be done in coordination with FHWA. The Liaison will review the Alternative Analysis for compliance with the 404(b)(1) Guidelines and return comments on the analysis to EEG. The Liaison will provide written approval of the Alternatives Analysis if there are no comments. In the event that the Liaison returns comments to EEG without approval, EEG will work with the Liaison until the Alternatives Analysis is approved by the Liaison.

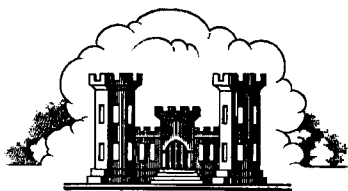
- VI. EEG will provide the Liaison with a draft copy of the environmental document being prepared for the proposed project for review and comment. The Liaison's review will occur concurrently with FHWA's review. The Liaison will return any comments on the environmental document in writing to EEG.
- VII. In the event that complete avoidance of Section 404 jurisdictional waters is not possible, EEG will provide the Liaison with a Mitigation Proposal to offset the proposed loss of waters of the U.S., including wetlands. The Liaison will review the proposal, and either return comments to EEG, or provide approval. In the event that comments are provided back to EEG without approval, EEG will take into consideration the comments provided by the Liaison, and will work with the Liaison until the proposal is approved by the Liaison.
- VIII. The EEG will provide the Liaison with the Individual Permit package application. The Liaison will determine if the application is complete. If incomplete, the Liaison will inform EEG of missing and/or incomplete information, and EEG will ensure that missing and/or incomplete information is transmitted to the Liaison. If the application is complete, the Liaison will begin processing the application package. Concurrent with the Individual Permit, EEG will provide the Liaison with the COE's EA 404 (b)(1) Evaluation, in draft form. The Liaison will begin working on the COE EA, and work with EEG on any missing and or incomplete information necessary for the finalization of the draft EA. (See attached "List of Information Required for Complete Application.")
- IX. The Liaison will issue the COE's Public Notice after determining the Individual Permit application is complete. In accordance with COE regulations, the Public Notice will last 30 calendar days.
- X. In the event that other agencies or the public submit comments on the Public Notice, the Liaison will collect these comments and transmit these to EEG for review and response. The EEG will provide written response to these comments and return these to the Liaison. The Liaison, in coordination and cooperation with EEG, will resolve and finalize any comments.
- XI. The Liaison will finalize the Mitigation Proposal, if not finalized before this point, and ensure that any agreements reached in the proposal become Special Conditions in the Individual Permit.
- XII. The Liaison will finalize the draft copy of the COE's EA.
- XIII. The Liaison will transmit two (2) copies of the draft Individual Permit, and one (1) copy of the draft EA to the COE Chief, Arizona Area Office, for review and signature. Once reviewed and signed, the COE Chief, Arizona Area Office will forward the Individual Permit (2 copies) and EA (1 copy) to the COE's Branch Chief in Los Angeles for review and signature. Once signed, the Branch Chief will send 2 signed draft Individual Permits to the ADOT District responsible for the project for review and signature by the ADOT

District Engineer. The ADOT District Engineer will send the signed copies back to the Branch Chief in Los Angeles, where the Branch Chief will finalize the permits via final signature, unless the Branch Chief assigns this task to the Arizona Section Chief. The Branch Chief will send one (1) final Individual Permit to the ADOT District Engineer, and one (1) approved Individual Permit to the COE Chief, Arizona Area Office for the project file.

- XIV. The ADOT District engineer will notify the Liaison seven (7) calendar days before the commencement of construction with the estimated construction period, name of contractor(s), and sign the postcard. Likewise, the ADOT District Engineer will notify the Liaison once construction is complete, via postcard. [See attached "Department of the Army Permit" (Notification of Commencement and Completion of Work).]

*\* Process is documented in typical order of occurrence. For projects in which atypical situations arise (i.e., change in project scope, change in project design, etc.), order may vary and process will adjust accordingly.*

## JURISDICTIONAL DELINEATION REQUEST



U.S. Army Corps of Engineers  
Los Angeles District Regulatory Branch  
3636 N. Central Ave., Suite 900  
Phoenix, Arizona 85012-1939  
Phone (602) 640-5385  
FAX: (602) 640-2020

### MINIMUM REQUIREMENTS CHECKLIST (Request will not be processed without this information)

- \_\_\_\_\_ Letter requesting delineation of Section 404 Clean Water Act and/or Section 10 River and Harbor Act jurisdictional areas (i.e., waters of the United States) sent to the address above
- \_\_\_\_\_ Vicinity map and/or directions to the site
- \_\_\_\_\_ Documentation of property ownership
- \_\_\_\_\_ Owner's signature and statement designating official agent and authorizing Corps personnel to enter property for field review, if necessary
- \_\_\_\_\_ Two copies of a recent vintage (last two years or following the latest major flood event) good quality aerial photograph on blueline or blackline paper, scale of 1":100' (or scale approved by Corps' project manager), overlapping adjacent properties
- \_\_\_\_\_ Index map if project area covers more than one aerial photograph
- \_\_\_\_\_ North arrow on aerial photographs
- \_\_\_\_\_ Scale noted on aerial photographs
- \_\_\_\_\_ Date of photograph noted on aerial photographs
- \_\_\_\_\_ Project area boundary noted on aerial photographs
- \_\_\_\_\_ Identifiable landmarks, prominent roads, watercourses, and other major features labeled on aerial photographs
- \_\_\_\_\_ Range, Township, Section that describe site location
- \_\_\_\_\_ Project site sketched on a copy of USGS Quadrangle map (include name of quad map)

### ADDITIONAL ITEMS (May be required to process your request)

- \_\_\_\_\_ Proposed wetland delineation performed by a qualified individual in accordance with the criteria identified in the 1987 Corps Wetland Delineation Manual (Y-87-1), as modified by subsequent guidance. Field indicator data forms must be included with any delineation submitted. Manual available on the web at <http://el.erdc.usace.army.mil/wetlands/pdfs/wlman87.pdf>
- \_\_\_\_\_ Project plan view including one or two foot contour intervals at same scale as aerial photographs
- \_\_\_\_\_ On site panoramic ground photographs depicting both upstream and downstream conditions of all project washes showing scour areas, vegetation, and soil conditions with photos referenced to project location
- \_\_\_\_\_ Report describing the biological resources on the project site, including any hydrophytic (wetlands) vegetation
- \_\_\_\_\_ Project plan view showing 100-year, 10-year, and 2-year event surface area
- \_\_\_\_\_ HEC-1 analysis indicating 100-year "Q" for all project washes
- \_\_\_\_\_ Documentation of tributary connection or adjacency to interstate waters
- \_\_\_\_\_ Drainage Report
- \_\_\_\_\_ Table indicating sample points and width of wash at sample points
- \_\_\_\_\_ Table of physical and biological indicators observed in the field
- \_\_\_\_\_ Other:



## **LIST OF INFORMATION REQUIRED FOR COMPLETE APPLICATION**

The following information would assist the Corps of Engineers in reviewing your application for a Department of the Army permit. Not all of the information is necessary or applicable to each project. Please provide the information appropriate to your proposed project. Supplying this information when you file your application could significantly reduce the processing time.

\*\*\*\*\*

### **APPLICANT INFORMATION:**

Mailing Address  
Telephone Number during business hours  
Confirmation of property ownership  
Signature and statement designating official agent

### **ACTIVITY INFORMATION:**

Complete written description of activity  
Location  
Scheduling of the activity  
Type and quantity of structural material used or removed

### **PURPOSE:**

Purpose for proposed activity/discharge  
Need for the proposed activity

### **DISCHARGE OF DREDGE AND FILL MATERIAL:**

Type of material to be dredged or used as fill  
Composition of material to be dredged or used as fill  
Quantity of material to be dredged or used as fill in cubic yards  
Method of dredging if applicable  
Plans and location for disposal of the dredged material  
Dimensions of the fill area in square yards  
Location of the discharge site  
Delineation of special aquatic sites  
Source of the fill material  
Method of discharging material  
Method of transportation of dredged material  
Dimensions of the adjacent structures  
Proposed use of fill area, including specific structures to be erected on fill area or platform

**NAMES AND ADDRESSES ADJOINING PROPERTY OWNERS/LESSEES** (Please notify Corps of Engineers if more than four and submit these on pre-typed address labels)

## STATUS OF ADDITIONAL PERMITS, CERTIFICATION OR DOCUMENTATION REQUIRED

Arizona Department of Environmental Quality AND/OR U.S. Environmental Protection Agency - 401  
certification

State Historic Preservation Officer - documentation of contact

U.S. Fish and Wildlife Service - documentation of contact

## REQUIRED DRAWINGS

### *General Requirements:*

Submit one legible copy of all drawings on 8 ½ x 11-inch white paper with a 1-inch margin around the entire sheet. The title box shall contain the title of proposed activity, name of water body, county, city, date, and sheet number.

### *Vicinity Map:*

Cover an area large enough so the project can be easily located

Arrow marking project area

Section, Township, Range

Identifiable landmarks

Name or number of roads

North arrow Scale

### *Plan View Drawing:*

Existing bank lines

Ordinary high water line

Average water depth around the activity dimensions immediately adjacent to the proposed activity

North arrow Scale

### *Elevation and/or Cross Section Drawing(s):*

Water elevation as shown on plan view drawing

Dimensions of the proposed project

Scale

\*\*\*\*\*

## ADDITIONAL PROJECT INFORMATION:

Mitigation plan including: Layout & Mitigation; Description; Schedule of planting; species list; maintenance & monitoring program

Photographs of the project site (aerials if available)

Report describing the biological resources on the project site

Report of focused surveys for endangered species. Contact the Fish & Wildlife Service (602) 640-2720

Report of archeologist/historian at the regional center in your location. Contact Arizona State Parks (602) 542-4174 for all counties within the State of Arizona

Report describing the cultural resources on the project site

Alternatives Analysis for individual permit

DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT  
CORPS OF ENGINEERS  
P.O. BOX 2711  
LOS ANGELES, CALIFORNIA 90053-2325

OFFICIAL BUSINESS



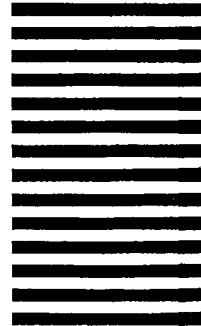
NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

**BUSINESS REPLY CARD**

FIRST CLASS PERMIT NO. 12762 WASHINGTON, D.C.

POSTAGE WILL BE PAID BY THE DEPARTMENT OF THE ARMY

DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
ATTN: REGULATORY FUNCTIONS BRANCH  
P.O. BOX 2711  
LOS ANGELES, CA 90053-2325



**FRONT**

**DEPARTMENT OF THE ARMY  
PERMIT**

(Notification of Commencement and Completion of Work)

PERMIT NO. \_\_\_\_\_

DATE WORK WILL COMMENCE \_\_\_\_\_

ESTIMATED CONSTRUCTION PERIOD \_\_\_\_\_  
(IN WEEKS)

NAME OF CONTRACTOR \_\_\_\_\_  
(PHONE)

DATE WORK WAS COMPLETED \_\_\_\_\_

"I hereby certify that the contractor has read and agreed to comply with the terms and conditions of the permit".

SIGNATURE \_\_\_\_\_  
(PERMITEE OR AGENT)

SPD FORM 1 MAY 80 192-R (REPLACES SPK FORM 394, 1 MAY 79)

**BACK**